

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

CUSTOMER NO. 22927

Applicants: WALKER et al.

Application No.: 09/850,328

Filed: May 7, 2001

Title: METHOD AND APPARATUS FOR ESTABLISHING
PRICES FOR A PLURALITY OF PRODUCTS

Attorney Docket No. 00-101

Group Art Unit: 3622

Examiner: CHAMPAGNE, Donald

REQUEST FOR REFUND PURSUANT TO 37 C.F.R. § 1.26

Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

To Whom It May Concern:

On November 19, 2007, Applicants erroneously filed a Pre-Appeal Brief Request for Review and a Notice of Appeal for the above identified application. Applicants overlooked the fact that a Request for Continued Examination had already been filed on October 18, 2007 in Response to a Final Office Action. For the reasons set forth below, Applicants are entitled to a refund of \$1560.00.

RELEVANT FACTS AND PROOF

1. The Examiner issued a Final Office Action on May 18, 2007 for the above identified pending application.
2. In response, Applicants filed a Request for Continue Examination (RCE) on October 18, 2007 that included a Petition for a Two-Month extension of time to respond (*See EXHIBIT "A"*).
3. Applicants attorney mistakenly thought that a response was due by the final due date of November 18, 2007 because the paper file for this case did not include a paper copy of the RCE that had been filed on October 18th. Thus, a Pre-Appeal Brief Request for Review was prepared and filed with a Notice of Appeal, a Petition for a Three-Month Extension of time to respond, and permission to charge the Applicant's Deposit account for the requisite fees. (*See EXHIBIT "B"*).
4. Because the RCE satisfied the response requirement for this application and the requisite fees were paid at that time (on October 18, 2007), the Applicants are entitled to a refund in the amount of \$1,560.00 for the erroneous filing of the Pre-Appeal Brief Request for Review, the fee associated with the Petition for a Three-Month extension of time, and the fee for a Notice of Appeal filed on November 19, 2007.

ENTITLEMENT TO REFUND

Applicants are entitled to a refund in the amount of \$1,560.00 because all necessary papers were filed on October 18, 2007 as evidenced by the receipt of electronic filing included herewith. Should the Office be in agreement with the foregoing, please credit \$1,560.00 to Deposit Account No. 50-0271.

Conclusion

In view of the above, Applicants request that the payment authorized on November 19, 2007 concerning this application of \$1,560.00 be refunded to Deposit Account No. 50-0271.

Respectfully submitted,

November 19, 2007
Date

/Stephan J. Filipek, Reg. No. 33,384/
Stephan J. Filipek
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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Application No.: **09/850,328**Customer No. **22927**Examiner: **CHAMPAGNE, Donald**Confirmation No. **2523**

REMARKS AND ARGUMENTS

Applicants respectfully request Pre-Appeal Brief Review of the rejections contained in the Final Office Action mailed May 18, 2007 (the "**Final Action**"). No amendments are being filed with this Request, and this Request is being filed concurrently with a Notice of Appeal.

A. Status of Claims

The **Final Action** includes a statement on page 2 indicating that applicant's "Request for Reexamination" (hereinafter the "**RCE**") filed on March 1, 2007 was entered. Thus, claims **1, 4, 8, 9 13, 15-25, 28-34, 36, 37, 39-64, 69-75, 81 and 92-106** are pending (of these, claims **1, 56, 60, 69, 71, 75, 81 and 92-95** are independent).

Appellants note that the **RCE** included the following changes:

- Claims **2, 3, 5-7, 10-12, 14, 26, 27, 35, 38, 65-68, 76-80 and 82-91** were cancelled;
- Claims **1, 8, 9, 13, 17, 53, 56, 60, 69, 71, 75, 81 and 92-95** were amended; and
- Claims **96-106** were added.

However, many of these changes and additions were ignored by the Examiner as the **Final Action** recites that claims **1-25, 27-75 and 80-95** stand rejected under 35 U.S.C. §112, second paragraph, claims **1-18, 20-23, 27-71 and 80-95** stand rejected under 35 U.S.C. §102(c) as being anticipated by Chen et al., U.S. Patent No. 6,741,969 (hereinafter "**Chen**"), and claims **19, 24, 25 and 72-74** stand rejected under 35 U.S.C. §103(a) as obvious in view of **Chen**.

It is thus clear that claims **96-106** have not been examined, and that some of the cancelled claims (in particular, claims **2, 3, 5-7, 10-12, 14, 27, 35, 38, 65-68, 80 and 82-91**) are still being rejected in the **Final Action**.

B. Claim Rejections Under 35 U.S.C. §112, Second Paragraph

Claims **1-25, 27-75 and 80-95** stand rejected for allegedly being indefinite.

Appellants note that this rejection is moot with regard to claims **2, 3, 5-7, 10-12, 14, 26, 27, 35, 38 and 65-68**, as these claims were cancelled in the **RCE**.

The Examiner justifies the Section 112 rejections as follows:

"In every independent claim, either "one subsidizer different from the at least one merchant"... or "third party different from the merchant" is indefinite. The common meaning of "third party" is an entity that is independent of some other

first and second parties. However, business ownership is arbitrary and readily changeable. Suppose the first and second parties each owned 50% of a subsidizer: would said subsidizer still be a "third party"? (Or would it be a 1-1/2 party?) Alternatively, suppose that some forth entity owned 50% of the common stock of each of the three parties: which is the third party, or the first or second party for that matter? The amendment "Third party different from the merchant" does not overcome indefiniteness, first because "different" is not defined. The examiner interprets "different" to mean an ownership limitation, because that is implied in the disclosure... Assume then that said third party is a supplier to a merchant, Wal-Mart, for example. What happens if Wal-Mart decides to become vertically integrated and buys said "third party" supplier? The third party disappears, and any patent with such a limitation would presumably become worthless with respect that (sic., "to") those entities. Now what happens if Wal-Mart decides to form a joint venture and sells half of the former "third party" to another supplier? Is the hypothetical patent limited to a "third party" now supposed to apply to this "1-1/2 party"? The possibilities are endless. These ownership limitations are imprecise and indefinite." (See paragraphs 3-5 of the Final Action)

The PTO's policy manual (See MPEP 2173.02) provides that the Examiner, in reviewing a claim for compliance with Section 112, second paragraph, must consider the claim as a whole to determine whether the claim apprises one of ordinary skill in the art of its scope and, therefore, serves the required notice function, by providing clear warning to others as to what constitutes infringement of the patent (citing, e.g., *Solomon v. Kimberly-Clark Corp.*, 216 F.3d 1372, 1379, 55 USPQ2d 1279, 1283 (Fed. Cir. 2000); ... and *Metabolite Labs., Inc. v. Lab. Corp. of Am. Holdings*, 370 F.3d 1354, 1366, 71 USPQ2d 1081, 1089 (Fed. Cir. 2004) ("The requirement to 'distinctly' claim means that the claim must have a meaning discernible to one of ordinary skill in the art when construed according to correct principles...Only when a claim remains insolubly ambiguous without a discernible meaning after all reasonable attempts at construction must a court declare it indefinite."). Accordingly, a claim term that is not used or defined in the specification is not indefinite if the meaning of the claim term is discernible. Furthermore, claims are indefinite "if reasonable efforts at claim construction prove futile," that is, if a claim "is insolubly ambiguous, and no narrowing construction can properly be adopted." *Exxon Research & Engineering Co. v. United States*, 265 F.3d 1371, 1375 (Fed. Cir. 2001). But even if it is a formidable task to understand a claim, and the result not unanimously accepted, as long as the boundaries of a claim may be understood it is "sufficiently clear to avoid invalidity [for] indefiniteness." *Id.* at 1375. See also *Invitrogen Corp. v. Biocrest Mfg., L.P.*, 424 F.3d 1374, 1383 (Fed. Cir. 2005).

Appellants respectfully submit that each of pending independent claims **1, 56, 60, 69, 71, 75, 81 and 92-95** is not insolubly ambiguous as their wording informs the common meaning of a “third party” as an entity *other than* the principals involved in a transaction. The Examiner recognizes that the common meaning of “third party” is *an entity that is independent of some other first and second parties* (see the second sentence of the text quoted above). Each of independent claims **1, 56, 60 and 92-95** clearly recites that the parties involved in the transaction are the merchant and the customer, and that the subsidizer is the “third party”. With regard to independent claims **69, 71, 75 and 81**, it is clear that the parties involved in the transaction are the restaurant and the customer, and that the “third party” is the third party. Moreover, dependent claims **96-106** (added in the RCE and ignored) make it abundantly clear that the first party (merchant or restaurant) is a different entity than the third party (subsidizer or third party entity) that provides the price adjustment (discount) to the second party (customer).

Appellants respectfully submit that the phrase “third party different from the merchant” clarifies the relationships, and that the Examiner’s hypothetical examples quoted above are disingenuous at least because shifting business ownership issues are not the issue here; the issue is whether the claims as written fairly apprise one of ordinary skill in the art of their scope. Appellants assert that they do. One skilled in the art would have no trouble understanding that a third party subsidizer different than the merchant provides the subsidy to the customer. Accordingly, these claims are definite, and this Section 112 rejection cannot stand.

C. Claim Rejections Under 35 U.S.C. §102(e)

Claims **1-18, 20-23, 27-71, 75 and 80-95** stand rejected as anticipated by Chen. However, the Section 102(e) rejections as to independent claims **65, 80 and 82** are moot, as these claims were cancelled in the RCE.

Pending claim **1** is illustrative of the pending independent claims, and pertains to a process that includes providing an indication of a price adjustment for a customer, the price adjustment associated with a subsidy offer. The subsidy offer is associated with at least one subsidizer different from the at least one merchant. The subsidy offer includes a qualifying action *that a customer must agree to perform to receive the price adjustment*, and the qualifying action concerns a product of the subsidizer. Claim **1** also recites *receiving an acceptance of the*

subsidy offer, and providing the price adjustment to the customer. The present application contains numerous examples of qualifying actions of the third party (subsidizer) such as test driving a vehicle at an automobile dealership, shopping at a particular store, and the like.

In contrast, Chen describes methods and systems for reducing excess capacity of restaurants and other industries, for example, during off-peak hours. Chen describes a user entering an “incentive request” that may be processed by or for a restaurant to determine if a dining incentive should be issued. Most of the described incentive schemes involve a discount provided by the restaurant and pertain only to the food dishes offered by the restaurant. But Chen also discloses item specific promotions that could be offered and that may be funded by the restaurant, or directly by manufacturers or food and beverage suppliers. For example, a customer who buys a bottle of red wine with a meal at the restaurant and pays with a credit card that is being tracked may receive an offer from a winemaker for a 10% discount on another bottle of the *same* wine, or a competitor might offer a discount to the customer to try a similar red wine (Chen, col. 20, lines 3-13). But Chen does not teach or suggest to offer to a customer a price adjustment *for the plurality of products of the merchant* in exchange for that customer agreeing to perform *a qualifying action that concerns a product of the subsidizer*, and then *receiving an acceptance of the subsidy offer, and providing the price adjustment to the customer* as recited by pending claim 1.

Furthermore, independent claims **69 and 71** recite *receiving a request from a customer utilizing a wireless device*, whereas independent claims **75 and 81** now recite *receiving a request from a customer utilizing a wireless device in a restaurant*. Appellants submit that the Examiner has totally ignored these limitations, and that Chen fails to teach or suggest such operation.

Furthermore, independent claims **1, 56, 60 and 92-95** were each amended in the RCE to recite that the subsidy offer includes at least one qualifying action *that a customer must agree to perform to receive the price adjustment*, wherein the qualifying action *concerns a product of the subsidizer*. Similarly, independent claims **69, 71, 75 and 81** were amended to make it clear that the price adjustment is available upon completion of a qualifying action *that a customer must agree to perform to receive the price adjustment*, wherein the qualifying action *concerns a product of the third party entity*. Chen fails to teach or even suggest such features.

Accordingly, Chen fails to teach or even suggest the feature of offering a price adjustment for a merchant's products to a customer if that customer agrees to perform a qualifying action that *concerns a product of the subsidizer (or that concerns a product of a third party entity)*, as recited in the independent claims **1, 56, 60, 69, 71, 81 and 92-95**. Furthermore, Chen does not teach or suggest *receiving a request from a customer utilizing a wireless device* as generally recited by independent claims **69, 71, 75 and 81**. Moreover, the dependent claims are not anticipated for at least the same reasons. Thus, the Section 102(c) rejections cannot stand.

D. Claim Rejections Under 35 U.S.C. §103(a)

Claims **19, 24, 25 and 72-74** stand rejected under as unpatentable over Chen. But each of these dependent claims concerns verification. The Examiner admits that Chen does not teach verification, but opines that since: "...verification is common sense... and easy to achieve..., it would have been obvious... to add price verification to the teachings of Chen et al.". (Final Action, paragraph 12 on page 4). Appellants respectfully assert that such an assertion, without more, does not constitute clear and particular findings supported by actual and substantial evidence that could support an obviousness rejection. Furthermore, there is no evidence to support any motivation to provide for a verification feature in Chen, and thus no *prima facie* case of obviousness has been made. Moreover, claims **19, 24, 25 and 72-74** directly or indirectly depend on at least one of independent claims **1 and 71**, which are patentably distinct from Chen as explained above. Thus, claims **19, 24, 25 and 72-74** should be allowable for at least the same reasons. Accordingly, the Section 103(a) rejections cannot stand.

E. Conclusion

In view of the above remarks, we respectfully request review and reversal of all of the Section 112, 102(e) and 103(a) rejections of the pending claims.

Respectfully submitted,

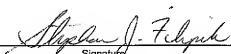
November 15, 2007
Date

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NOTICE OF APPEAL FROM THE EXAMINER TO THE BOARD OF PATENT APPEALS AND INTERFERENCES		Docket Number (Optional) 00-101							
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or printed name _____		In re Application of Walker et al. <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Application Number 09/850,328</td> <td style="width: 50%;">Filed May 7, 2001</td> </tr> <tr> <td colspan="2">For Method and Apparatus For Establishing...</td> </tr> <tr> <td>Art Unit 3622</td> <td>Examiner Donald Champagne</td> </tr> </table>		Application Number 09/850,328	Filed May 7, 2001	For Method and Apparatus For Establishing...		Art Unit 3622	Examiner Donald Champagne
Application Number 09/850,328	Filed May 7, 2001								
For Method and Apparatus For Establishing...									
Art Unit 3622	Examiner Donald Champagne								
Applicant hereby appeals to the Board of Patent Appeals and Interferences from the last decision of the examiner. The fee for this Notice of Appeal is (37 CFR 41.20(b)(1)) \$ 510.00 <input type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27. Therefore, the fee shown above is reduced by half, and the resulting fee is: \$ _____ <input type="checkbox"/> A check in the amount of the fee is enclosed. <input type="checkbox"/> Payment by credit card. Form PTO-2038 is attached. <input type="checkbox"/> The Director has already been authorized to charge fees in this application to a Deposit Account. I have enclosed a duplicate copy of this sheet. <input checked="" type="checkbox"/> The Director is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. <u>50-0271</u> . I have enclosed a duplicate copy of this sheet. <input type="checkbox"/> A petition for an extension of time under 37 CFR 1.136(a) (PTO/SB/22) is enclosed. WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038. I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. (203) 461-7252 Registration number <u>33,384</u> Telephone number <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____ November 19, 2007 Date _____ NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below".									
<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.									

This collection of information is required by 37 CFR 41.31. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.8. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 00-101	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or printed name _____		Application Number 09/850,328 Filed May 7, 2001 First Named Inventor Jay S. Walker Art Unit 3622 Examiner Donald Champagne	
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a notice of appeal. The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.			
I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. 33,384 Registration number _____ <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____		 Signature Stephan J. Filipek Typed or printed name 203-461-7252 Telephone number November 19, 2007 Date	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.			
<input type="checkbox"/> *Total of <u>1</u> forms are submitted.			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.8. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Under the paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a)		Docket Number (Optional)
FY 2008		00-101
(Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).)		
Application Number 09/850,328	Filed May 7, 2001	
For METHOD AND APPARATUS FOR ESTABLISHING PRICES FOR A PLURALITY OF PRODUCTS		
Art Unit 3622	Examiner Donald Champagne	

This is a request under the provisions of 37 CFR 1.136(a) to extend the period for filing a reply in the above identified application.

The requested extension and fee are as follows (check time period desired and enter the appropriate fee below):

	Fee	Small Entity Fee	
<input type="checkbox"/> One month (37 CFR 1.17(a)(1))	\$120	\$60	\$ _____
<input type="checkbox"/> Two months (37 CFR 1.17(a)(2))	\$460	\$230	\$ _____
<input checked="" type="checkbox"/> Three months (37 CFR 1.17(a)(3))	\$1050	\$525	\$ 1050
<input type="checkbox"/> Four months (37 CFR 1.17(a)(4))	\$1640	\$820	\$ _____
<input type="checkbox"/> Five months (37 CFR 1.17(a)(5))	\$2230	\$1115	\$ _____

☐ Applicant claims small entity status. See 37 CFR 1.27.

☐ A check in the amount of the fee is enclosed.

☐ Payment by credit card. Form PTO-2038 is attached.

☐ The Director has already been authorized to charge fees in this application to a Deposit Account.

☐ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number _____, I have enclosed a duplicate copy of this sheet.

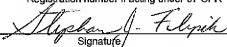
WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

I am the ☐ applicant/inventor.

☐ assignee of record of the entire interest. See 37 CFR 3.71.
Statement under 37 CFR 3.73(b) is enclosed (Form PTO/SB/96).

☒ attorney or agent of record. Registration Number 33,384

☐ attorney or agent under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____



 Signature

November 19, 2007

 Date

Stephan J. Filipek

 Typed or printed name

(203) 461-7252

 Telephone Number

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☒ Total of 1 forms are submitted.

This collection of information is required by 37 CFR 1.136(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 6 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Electronic Patent Application Fee Transmittal

Application Number:	09850328			
Filing Date:	07-May-2001			
Title of Invention:	Method and apparatus for establishing prices for a plurality of products			
First Named Inventor/Applicant Name:	Jay S. Walker			
Filer:	Michael David Downs/Greg Venuto			
Attorney Docket Number:	00-101			
Filed as Large Entity				
Utility Filing Fees				
Description	Fee Code	Quantity	Amount	Sub-Total in USD(\$)
Basic Filing:				
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				
Notice of appeal	1401	1	510	510
Post-Allowance-and-Post-Issuance:				
Extension-of-Time:				

Description	Fee Code	Quantity	Amount	Sub-Total in USD(\$)
Extension - 3 months with \$0 paid	1253	1	1050	1050
Miscellaneous:				
Total in USD (\$)				1560

Electronic Acknowledgement Receipt

EFS ID:	2484123
Application Number:	09850328
International Application Number:	
Confirmation Number:	2523
Title of Invention:	Method and apparatus for establishing prices for a plurality of products
First Named Inventor/Applicant Name:	Jay S. Walker
Customer Number:	22927
Filer:	Michael David Downs/Greg Venuto
Filer Authorized By:	Michael David Downs
Attorney Docket Number:	00-101
Receipt Date:	19-NOV-2007
Filing Date:	07-MAY-2001
Time Stamp:	13:00:08
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	yes
Payment Type	Deposit Account
Payment was successfully received in RAM	\$1560
RAM confirmation Number	7346
Deposit Account	500271
Authorized User	

The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows:

Charge any Additional Fees required under 37 C.F.R. Section 1.17 (Patent application and reexamination processing fees)

Charge any Additional Fees required under 37 C.F.R. Section 1.21 (Miscellaneous fees and charges)

File Listing:

Document Number	Document Description	File Name	File Size(Bytes) /Message Digest	Multi Part /.zip	Pages (if appl.)
1	Pre-Brief Conference request	00-101_RQ_05-18-07.pdf	163234	no	5
			9ac13e9708df5d1187e9632a540cc3d765329754		
Warnings:					
Information:					
2	Notice of Appeal Filed	00-101_NOA_11-19-07.pdf	128888	no	1
			b2d3790ea01010366a07356a2dfe83acab712c2696		
Warnings:					
Information:					
3	Pre-Brief Conference request	00-101_PABR_11-19-07.pdf	127548	no	1
			ca355cd5d950a40d94489d50c565de5c356293c38		
Warnings:					
Information:					
4	Extension of Time	00-101_PET_EXT_11-19-07.pdf	127542	no	1
			2a1e36319a39ed82bb0a45e678012d74c4d3d84355		
Warnings:					
Information:					
5	Fee Worksheet (PTO-06)	fee-info.pdf	8323	no	2
			4cd93542a0c4645138185dc57c0b45a7b04b665		
Warnings:					
Information:					
Total Files Size (in bytes):			555535		

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

Electronic Acknowledgement Receipt

EFS ID:	2340665
Application Number:	09850328
International Application Number:	
Confirmation Number:	2523
Title of Invention:	Method and apparatus for establishing prices for a plurality of products
First Named Inventor/Applicant Name:	Jay S. Walker
Customer Number:	22927
Filer:	Michael David Downs/Greg Venuto
Filer Authorized By:	Michael David Downs
Attorney Docket Number:	00-101
Receipt Date:	18-OCT-2007
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File Listing:

Document Number	Document Description	File Name	File Size(Bytes) /Message Digest	Multi Part /.zip	Pages (if appl.)
1	NPL Documents	00-101_REF_10-18-07.pdf	1474494 0d760925d3567916d33966e921c5d06d3a86c2b06	no	23
Warnings:					
Information:					
2	Information Disclosure Statement Letter	00-101_IDS_10-18-07.pdf	95563 65efb3dfc2231a7e82a5a5cd7ae293b6f14a59f6cb	no	2
Warnings:					
Information:					
3	Request for Continued Examination (RCE)	00-101_RCE_TR_10-18-07.pdf	1069045 0482a6bfc3939dea5ca830ae6c43d6d9e87731127f6	no	1
Warnings:					
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4		00-101_RCE_05-18-07.pdf	197141 17d144c04445c05b51d479f8416da15c4a4a9595	yes	24
	Multipart Description/PDF files in .zip description				
	Document Description		Start	End	
	Request for Continued Examination (RCE)		1	1	
	Claims		2	17	
	Applicant Arguments/Remarks Made in an Amendment		18	24	
Warnings:					
Information:					
5	Fee Worksheet (PTO-06)	fee-info.pdf	8330 36da3d9d61da772a5601f1a36e04c57b8f6721	no	2
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Request for Continued Examination (RCE) Transmittal

Address to:
Mail Stop RCE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Application Number	09/850,328
Filing Date	May 7, 2001
First Named Inventor	Jay S. Walker
Art Unit	3622
Examiner Name	Donald Champagne
Attorney Docket Number	00-101

This is a Request for Continued Examination (RCE) under 37 CFR 1.114 of the above-identified application.

Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, or to any design application. See Instruction Sheet for RCEs (not to be submitted to the USPTO) on page 2.

1. **Submission required under 37 CFR 1.114** Note: If the RCE is proper, any previously filed unentered amendments and amendments enclosed with the RCE will be entered in the order in which they were filed unless applicant instructs otherwise. If applicant does not wish to have any previously filed unentered amendment(s) entered, applicant must request non-entry of such amendment(s).
- a. ☐ Previously submitted. If a final Office action is outstanding, any amendments filed after the final Office action may be considered as a submission even if this box is not checked.
- i. ☐ Consider the arguments in the Appeal Brief or Reply Brief previously filed on _____
- ii. ☐ Other _____
- b. ☐ Enclosed
- i. ☒ Amendment/Reply
- iii. ☒ Information Disclosure Statement (IDS)
- ii. ☐ Affidavit(s)/ Declaration(s)
- iv. ☐ Other _____
2. **Miscellaneous**
- Suspension of action on the above-identified application is requested under 37 CFR 1.103(c) for a
- a. ☐ period of _____ months. (Period of suspension shall not exceed 3 months; Fee under 37 CFR 1.17(i) required)
- b. ☐ Other _____
3. **Fees** The RCE fee under 37 CFR 1.17(e) is required by 37 CFR 1.114 when the RCE is filed.
- The Director is hereby authorized to charge the following fees, any underpayment of fees, or credit any overpayments, to Deposit Account No. 50-0271. I have enclosed a duplicate copy of this sheet.
- a. ☒
- i. ☒ RCE fee required under 37 CFR 1.17(e)
- ii. ☒ Extension of time fee (37 CFR 1.136 and 1.17)
- iii. ☐ Other _____
- b. ☐ Check in the amount of \$ _____ enclosed
- c. ☐ Payment by credit card (Form PTO-2038 enclosed)

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED

Signature	/Stephan J. Filipek; Reg. No. 33,384/	Date	October 18, 2007
Name (Print/Type)	Stephan J. Filipek	Registration No.	33,384

CERTIFICATE OF MAILING OR TRANSMISSION

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Signature	/Gregory Venuto/
Name (Print/Type)	Gregory Venuto
Date	October 18, 2007

This collection of information is required by 37 CFR 1.114. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

CUSTOMER NO. 22927

Applicants: Walker et al.
Application No.: 09/850,328
Filed: May 7, 2001
Title: METHOD AND APPARATUS FOR ESTABLISHING PRICES
FOR A PLURALITY OF PRODUCTS
Attorney Docket No.: 00-101
Confirmation No.: 2523
Group Art Unit: 3622
Examiner: CHAMPAGNE, Donald

***Request for Continued Examination (RCE)
Pursuant to the Following Submission of an***

**AMENDMENT AND RESPONSE
to the Final Office Action mailed May 18, 2007**

Mail Stop RCE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Examiner:

In response to the Final Office Action mailed May 18, 2007 (Part of Paper No. 20070510), please enter the following amendments and consider the following remarks.

This document is filed by Applicants' representative on behalf of the present Applicants for patent. Accordingly, references in this document to "we," "us," "our," and the like will be understood as indicating the present Applicants.

AMENDMENTS to the CLAIMS

A detailed listing of all claims that are, or were, in the present application is provided below. The status of each claim is identified, and markings indicate changes that have been made to any claims being currently amended by this Amendment.

1. (CURRENTLY AMENDED) A method for adjusting a price of at least one of a plurality of products, comprising:

- providing an indication of a plurality of products, each of said plurality of products having an initial price and being associated with at least one merchant;
- providing an indication of an available price adjustment;
- providing an indication of a subsidy offer associated with said price adjustment, said subsidy offer including at least one qualifying action that a customer must agree to perform to receive the price adjustment, wherein the subsidy offer is ~~and being~~ associated with at least one a ~~at least one a~~ subsidizer different from the at least one merchant and the qualifying action concerns a product of the subsidizer; and
- determining a second price for at least one of said plurality of products
- receiving an acceptance of the subsidy offer; and
- providing the price adjustment to the customer.

2.-3. (CANCELLED)

4. (ORIGINAL) The method of claim 1, wherein said providing an indication of an initial price for each of said plurality of products and a price adjustment occurs after said providing an indication of a subsidy offer.

5.-7. (CANCELLED)

8. (CURRENTLY AMENDED) The method of claim 1, further comprising, prior to providing the price adjustment ~~wherein said determining a second price for at least one of said plurality of products, occurs after~~ receiving an indication of a completion of said qualifying action.

9. (CURRENTLY AMENDED) The method of claim 1, further comprising, prior to providing the price adjustment wherein said determining a second price for at least one of said plurality of products, ~~occurs after~~ receiving an indication of a commitment to complete said qualifying action.

10.-12. (CANCELLED)

13. (CURRENTLY AMENDED) The method of claim 1, further comprising, prior to providing the price adjustment to the customer, [:] verifying completion of said qualifying action.

14. (CANCELLED)

15. (ORIGINAL) The method of claim 1, further comprising:
adjusting a second price of at least one of said plurality of products if said qualifying action is not completed.

16. (ORIGINAL) The method of claim 1, further comprising:
adjusting a second price of at least one of said plurality of products if an indication of a completion of said qualifying action is not received within a predetermined period of time.

17. (CURRENTLY AMENDED) The method of claim 1, further comprising:
providing an indication of a record of a a [said] second price of at least one of said plurality of products.

18. (ORIGINAL) The method of claim 17, wherein said record is provided to at least one of the following:

- a merchant;
- a merchant device;
- a customer;
- a customer device;
- a subsidizer; and
- a subsidizer device.

19. (ORIGINAL) The method of claim 17, further comprising:
verifying accuracy of said record.

20. (ORIGINAL) The method of claim 17, wherein said record includes an electronic signal.

21. (ORIGINAL) The method of claim 17, wherein said record is in electronic format.

22. (ORIGINAL) The method of claim 17, wherein said record is provided in tangible form.

23. (ORIGINAL) The method of claim 1, further comprising:
receiving an indication of a record from a merchant regarding at least one of said plurality of products.

24. (ORIGINAL) The method of claim 23, further comprising:
verifying accuracy of said record.

25. (PREVIOUSLY PRESENTED) The method of claim 24, wherein said verifying accuracy of said record includes comparing a price for a product identified in said record with a second price of a product from said plurality of products.

26.-27. (CANCELLED)

28. (PREVIOUSLY PRESENTED) The method of claim 1, wherein said merchant is a restaurant.

29. (PREVIOUSLY PRESENTED) The method of claim 1, further comprising:
providing to the at least one merchant an indication of an acceptance of said subsidy offer.

30. (ORIGINAL) The method of claim 1, wherein at least one of said plurality of products is provided by a restaurant.

31. (ORIGINAL) The method of claim 1, further comprising:
receiving a customer identifier.

32. (ORIGINAL) The method of claim 31, further comprising at least one of the following:

receiving a merchant identifier associated with said customer identifier; and
receiving a payment identifier associated with said customer identifier.

33. (ORIGINAL) The method of claim 1, further comprising:
providing an indication of a second price associated with at least one of said plurality of products.

34. (ORIGINAL) The method of claim 1, further comprising:
providing an indication of an adjustment amount.

35. (CANCELLED)

36. (ORIGINAL) The method of claim 34, wherein said indication of an adjustment amount is provided to at least one of the following:

- a merchant;
- a merchant device;
- a subsidizer;
- a subsidizer device;
- a customer;
- a customer device; or
- a controller.

37. (ORIGINAL) The method of claim 34, further comprising receiving an indication of an allocation of said adjustment amount to at least one of said plurality of products.

38. (CANCELLED)

39. (ORIGINAL) The method of claim 1, further comprising:
allocating an adjustment amount to at least one of said plurality of products.

40. (ORIGINAL) The method of claim 1, further comprising:
determining an adjustment amount.

41. (ORIGINAL) The method of claim 1, further comprising:
receiving an indication of a group of products prior to said providing an indication of a plurality of products.

42. (ORIGINAL) The method of claim 41, wherein said indication is received from:

- a merchant;
- a merchant device;
- a customer;
- a customer device;
- a subsidizer; and
- a subsidizer device.

43. (ORIGINAL) The method of claim 41, wherein said group of products is a subset of said plurality of products.

44. (ORIGINAL) The method of claim 41, wherein said plurality of products is a subset of said group of products.

45. (ORIGINAL) The method of claim 1, further comprising:
receiving an indication of a subsidization of a lowering of an initial price for at least one of said plurality of products.

46. (ORIGINAL) The method of claim 1, wherein said indication of a plurality of products includes an indication of an initial price for at least one of said plurality of products.

47. (ORIGINAL) The method of claim 1, wherein said indication of a plurality of products includes an indication of an initial price for each of said plurality of products.

48. (ORIGINAL) The method of claim 1, further comprising:
providing an indication of an initial price for at least one of said plurality of products.

49. (ORIGINAL) The method of claim 1, further comprising:
providing an indication of an initial price for each of said plurality of products.

50. (ORIGINAL) The method of claim 1, further comprising:
receiving an indication of said price adjustment.

51. (ORIGINAL) The method of claim 50, wherein said indication of said price adjustment is received from at least one of the following prior to said sending an indication of an available price adjustment:

- a subsidizer;
- a subsidizer device;
- a merchant; or
- a merchant device.

52. (ORIGINAL) The method of claim 1, further comprising:
determining a subsidization amount.

53. (CURRENTLY AMENDED) The method of claim 52, in which ~~wherein said~~ determining a subsidization amount includes receiving an indication from a subsidizer establishing said subsidization amount.

54. (ORIGINAL) The method of claim 52, further comprising:
determining said price adjustment, wherein said price adjustment is less than or equal to said subsidization amount.

55. (ORIGINAL) The method of claim 52, further comprising:
allocating said subsidization amount across a plurality of price adjustments.

56. (CURRENTLY AMENDED) A method for adjusting a total price for a plurality of products, comprising:

providing an indication of a plurality of products, wherein the plurality of products are associated with at least one merchant;

providing an indication of an initial total price of said plurality of products and a price adjustment;

providing an indication of a subsidy offer associated with said price adjustment, said subsidy offer including at least one qualifying action that a customer must agree to perform to receive the price adjustment, wherein the subsidy offer is ~~and being~~ associated with at least one subsidizer different from the at least one merchant, and the qualifying action concerns a product of the subsidizer; and

adjusting said initial total price of said plurality of products by said price adjustment.

57. (ORIGINAL) The method of claim 56, wherein said adjusting said initial total price occurs after receiving an indication of an acceptance of said subsidy offer.

58. (ORIGINAL) The method of claim 56, wherein said adjusting said initial total price occurs after receiving an indication of a completion of said qualifying action.

59. (ORIGINAL) The method of claim 56, wherein said adjusting said initial total price occurs after receiving an indication of a commitment to complete said qualifying action.

60. (CURRENTLY AMENDED) A method for adjusting a price for each of a plurality of products, comprising:

providing an indication of a plurality of products, wherein the plurality of products are associated with at least one merchant;

providing an indication of an initial price for each of said plurality of products and a corresponding price adjustment for each of said plurality of products;

providing an indication of a subsidy offer associated with said plurality of products, said subsidy offer including at least one qualifying action that a customer must agree to perform to receive the price adjustment, wherein the subsidy offer is ~~and being~~ associated with at least one subsidizer different from the at least one merchant and the qualifying action concerns a product of the subsidizer; and

adjusting said initial price for at least one of said plurality of products by its corresponding price adjustment.

61. (ORIGINAL) The method of claim 60, wherein said adjusting said initial price for at least one of said plurality of products occurs after receiving an indication of an acceptance of said subsidy offer.

62. (ORIGINAL) The method of claim 60, wherein said adjusting said initial price for at least one of said plurality of products occurs after receiving an indication of a completion of said qualifying action.

63. (ORIGINAL) The method of claim 60, further comprising:
receiving a request for information regarding a selection of products.

64. (ORIGINAL) The method of claim 63, wherein said plurality of products is a subset of said selection of products.

65.-68. (CANCELLED)

69. (CURRENTLY AMENDED) A method for adjusting prices of one or more items available at a restaurant, comprising:

receiving a request from a customer utilizing a wireless device for a list of items associated with a restaurant;

providing an indication of said list, wherein said list includes a plurality of items available from said restaurant, each of said plurality of items having an associated initial price and an associated price adjustment available upon completion of a qualifying action that the customer must agree to perform to receive the price adjustment, wherein the qualifying action is associated with a third party entity different from the restaurant and concerns a product of the third party entity;

receiving an indication of a commitment from the customer to complete said qualifying action; and

adjusting the associated initial price of at least one of said plurality of items by its respective price adjustment.

70. (ORIGINAL) The method of claim 69, wherein said list of items comprises a menu.

71. (CURRENTLY AMENDED) A method for adjusting a price of at least one item available at a restaurant, comprising:

receiving a request from a customer utilizing a wireless device in a restaurant for a plurality of items associated with the [a] restaurant;

providing an indication of said plurality of items, each of said plurality of items having an associated initial price;

providing an indication of a plurality of qualifying actions associated with said plurality of items, each of said qualifying actions having an associated price adjustment and an action that the customer must agree to perform to receive a price adjustment, wherein each qualifying action is ~~and an~~ associated with a third party entity different from the restaurant and concerns a product of the third party entity;

receiving an indication of a selected one of said plurality of qualifying actions;

determining an adjusted price for at least one of said plurality of items using said price adjustment associated with said at least one of said plurality of qualifying actions; and

providing an indication of said adjusted price for at least one of said plurality of items.

72. (ORIGINAL) The method of claim 71, further comprising:

receiving a verification request.

73. (ORIGINAL) The method of claim 72, wherein said verification request includes at least one item and a price associated with said at least one item.

74. (ORIGINAL) The method of claim 73, further comprising:

verifying accuracy of said price associated with said at least one item in said verification request.

75. (CURRENTLY AMENDED) A method for adjusting prices of at least one item available at a restaurant, comprising:

receiving a request from a customer utilizing a wireless device in a restaurant for a menu of items associated with a restaurant;

providing an indication of said menu, wherein said indication includes an item available from said restaurant, said item having an associated initial price and an associated price adjustment available upon completion of a qualifying action that the customer must agree to perform to receive the price adjustment, wherein the qualifying action is associated with a third party entity different from the restaurant and concerns a product of the third party entity;

receiving an indication of a commitment from the customer to complete said qualifying action; and

determining a second price for said item using said price adjustment.

76. – 80. (CANCELLED)

81. (CURRENTLY AMENDED) A method for adjusting prices of one or more items available at a restaurant, comprising:

providing a request from a wireless device for a list of items associated with a restaurant;

receiving an indication of said list, wherein said list includes a plurality of items available from said restaurant, each of said plurality of items having an associated initial price and an associated price adjustment available upon completion of a qualifying action, wherein the qualifying action is associated with a third party entity different from the restaurant and concerns a product of the third party entity;

providing an indication of a commitment to complete said qualifying action; and

receiving an indication of an adjustment of at least one of said plurality of items initial price by its respective price adjustment.

82.-91 (CANCELLED)

92. (CURRENTLY AMENDED) A system for adjusting the price of at least one product, comprising:

a memory;

a communication port; and

a processor connected to said memory and said communication port, said

processor being operative to:

provide an indication of a plurality of products, each of said plurality of products having an initial price and being associated with at least one merchant;

provide an indication of a price adjustment;

provide an indication of a subsidy offer associated with said price adjustment, said subsidy offer including at least one qualifying action that the customer must agree to perform to receive the price adjustment, wherein the subsidy offer is ~~and being~~ associated with at least one subsidizer different from the at least one merchant and concerns a product of the subsidizer; and determine a second price for at least one of said plurality of products.

93. (CURRENTLY AMENDED) A computer readable medium for use in a pricing system, the computer readable medium storing a computer program comprising:

computer readable means for sending an indication of a plurality of products, each of said plurality of products having an initial price and being associated with at least one merchant;

computer readable means for sending an indication of a price adjustment;

computer readable means for sending an indication of a subsidy offer associated with said price adjustment, said subsidy offer including at least one qualifying action that the customer must agree to perform to receive the price adjustment, wherein the subsidy offer is ~~and being~~ associated with at least one subsidizer different from the at least one merchant and concerns a product of the subsidizer; and

computer readable means for establishing a second price for at least one of said plurality of products.

94. (CURRENTLY AMENDED) An article of manufacture, comprising:
a computer usable medium having a computer readable program means embodied therein for operating an information system, the computer readable program means in said article of manufacture operable to:

provide an indication of a plurality of products, each of said plurality of products having an initial price and being associated with at least one merchant;
provide an indication of a price adjustment;
provide an indication of a subsidy offer associated with said price adjustment, said subsidy offer including at least one qualifying action that a customer must agree to perform to receive the price adjustment, wherein the subsidy offer is ~~and being~~ associated with at least one subsidizer different from the at least one merchant and concerns a product of the subsidizer; and
determine a second price for at least one of said plurality of products.

95. (CURRENTLY AMENDED) An apparatus, comprising:
means for sending an indication of a plurality of products, each of said plurality of products having an initial price and being associated with at least one merchant;
means for sending an indication of a price adjustment;
means for sending an indication of a subsidy offer associated with said price adjustment, said subsidy offer including at least one qualifying action that a customer must agree to perform to receive the price adjustment, wherein the subsidy offer is ~~and being~~ associated with at least one subsidizer different from the at least one merchant and concerns a product of the subsidizer;
and
means for establishing a second price for at least one of said plurality of products.

96. (NEW) The method of claim 1, wherein the merchant is a restaurant, and the subsidizer comprises at least one of an automobile dealership, a mortgage brokerage company, an investment company, an insurance company, a taxi service, a retailer, a department store, a magazine subscription company, a credit card provider, a telephone service provider or an internet service provider.

97. (NEW) The method of claim 56, wherein the merchant is a restaurant, and the subsidizer comprises at least one of an automobile dealership, a mortgage brokerage company, an investment company, an insurance company, a taxi service, a retailer, a department store, a magazine subscription company, a credit card provider, a telephone service provider or an internet service provider.

98. (NEW) The method of claim 60, wherein the merchant is a restaurant, and the subsidizer comprises at least one of an automobile dealership, a mortgage brokerage company, an investment company, an insurance company, a taxi service, a retailer, a department store, a magazine subscription company, a credit card provider, a telephone service provider or an internet service provider.

99. (NEW) The method of claim 69, wherein the third party entity comprises at least one of an automobile dealership, a mortgage brokerage company, an investment company, an insurance company, a taxi service, a retailer, a department store, a magazine subscription company, a credit card provider, a telephone service provider or an internet service provider.

100. (NEW) The method of claim 71, wherein the third party entity comprises at least one of an automobile dealership, a mortgage brokerage company, an investment company, an insurance company, a taxi service, a retailer, a department store, a magazine subscription company, a credit card provider, a telephone service provider or an internet service provider.

101. (NEW) The method of claim 75, wherein the third party entity comprises at least one of an automobile dealership, a mortgage brokerage company, an investment company, an insurance company, a taxi service, a retailer, a department store, a magazine subscription company, a credit card provider, a telephone service provider or an internet service provider.

102. (NEW) The method of claim 81, wherein the third party entity comprises at least one of an automobile dealership, a mortgage brokerage company, an investment company, an insurance company, a taxi service, a retailer, a department store, a magazine subscription company, a credit card provider, a telephone service provider or an internet service provider.

103. (NEW) The system of claim 92, wherein the at least one merchant is a restaurant, and the subsidizer comprises at least one of an automobile dealership, a mortgage brokerage company, an investment company, an insurance company, a taxi service, a retailer, a department store, a magazine subscription company, a credit card provider, a telephone service provider or an internet service provider.

104. (NEW) The computer readable medium of claim 93, wherein the merchant is a restaurant, and the subsidizer comprises at least one of an automobile dealership, a mortgage brokerage company, an investment company, an insurance company, a taxi service, a retailer, a department store, a magazine subscription company, a credit card provider, a telephone service provider or an internet service provider.

105. (NEW) The article of manufacture of claim 94, wherein the merchant is a restaurant, and the subsidizer comprises at least one of an automobile dealership, a mortgage brokerage company, an investment company, an insurance company, a taxi service, a retailer, a department store, a magazine subscription company, a credit card provider, a telephone service provider or an internet service provider.

106. (NEW) The apparatus of claim 95, wherein the merchant is a restaurant, and the subsidizer comprises at least one of an automobile dealership, a mortgage brokerage company, an investment company, an insurance company, a taxi service, a retailer, a department store, a magazine subscription company, a credit card provider, a telephone service provider or an internet service provider.

REMARKS

This Amendment is responsive to the Final Office Action dated May 18, 2007 (hereinafter the “Final Action”) in the above identified application. Applicants hereby respectfully request continued examination in accordance with 37 C.F.R. §1.114.

In view of the above amendments and the following remarks, we respectfully request favorable reexamination and allowance of the pending claims.

A. Status of the Application

Claims **1, 8, 9, 13, 17, 53, 56, 60, 69, 71, 75, 81 and 92-95** have been amended.

Claims **96-106** have been added.

Claims **2, 3, 5-7, 10-12, 14, 26, 27, 35, 38, 65-68, 76-80 and 82-91** have been cancelled.

Claims **1, 4, 8, 9, 13, 15-25, 28-34, 36, 37, 39-64, 69-75, 81 and 92-106** are pending. Of these, claims **1, 56, 60, 69, 71, 75, 81 and 92-95** are the only independent claims (a total of 11 independent claims).

B. The Final Office Action

Claims **1-25, 27-75 and 80-95** were rejected under 35 U.S.C. 112, second paragraph, as being indefinite.

Claims **1-18, 20-23, 26-71, 75 and 80-95** were rejected under 35 U.S.C. 102(e) for being anticipated by Chen et al., U.S. Patent No. 6,741,969 B1 (hereinafter “Chen”).

Claims **19, 24, 25, 72-74** were rejected under 35 U.S.C. 103(a) for being obvious in view of Chen.

C. The Section 112, second paragraph Rejections

Claims **1-25, 27-75 and 80-95** were rejected as being indefinite. In particular, the Final Action at paragraph 3 alleges that the phrases “a subsidizer different from the at least one merchant” and the “third party entity different from the merchant”, which appear in the independent claims, are indefinite. In addition, the term “third party entity” was deemed to be arbitrary and readily changeable, even though it was recognized that: “The common meaning of “third party” is an entity that is independent of some other first and second parties” (Final Action, paragraph 4).

The present claims pertain to methods and systems for allowing merchants to sell different products to different customers at different prices, wherein adjustments are made to the price of one or more of the products if the customer agrees to perform a qualifying action in return for receiving the price adjustment (see application, for example, at page 6, lines 21-26). In a restaurant oriented embodiment, a customer may have the choice of a 10% discount off of any of four entrees, or a five dollar discount, or a ten dollar discount off one of the entrees, which is dependent on which of three qualifying actions that the customer agrees to fulfill. In this example, each of the three qualifying actions is associated with a third party entity different from the restaurant-- a taxi service (customer agrees to take a taxi to the restaurant), a store (customer agrees to buy a particular brand of shampoo), and a department store (customer agrees to buy a sweater) (See application, page 19, line 27 to page 20, line 28). In view of this example, and several other examples set forth in the present application, Applicants respectfully submit that one skilled in the art would readily understand that each third party entity (or subsidizer) offering products or services is *different from* the restaurant (merchant) serving the entrees.

In addition, each of the independent claims **1, 56, 60, 69, 71, 75, 81 and 92-95** has been amended to make it clear that either the qualifying action (or the subsidy offer) *concerns a product of the subsidizer* (or *concerns a product of the third party entity*). Support for such changes can be found, for example, in the example described above (Application, page 19, line 27 to page 20, line 28). Thus, no new matter has been added.

Furthermore, each of new claims **96-106** depend on one of the independent claims **1, 56, 60, 69, 71, 75, 81 and 92-95**, and recites that the merchant is a restaurant (where applicable), and that the subsidizer (or third party entity) is at least one of an automobile dealership, a mortgage brokerage company, an investment company, an insurance company, a taxi service, a retailer, a department store, a magazine subscription company, a credit card provider, a telephone service provider or an internet service provider. Support for such dependent claims can be found, for example, in the specification on page 18, lines 17-23, and on page 19, line 27 to page 20, line 28. No new matter has been added.

Applicants respectfully submit that the amendments to independent claims **1, 56, 60, 69, 71, 75, 81 and 92-95** discussed above, and the addition of claims **96-106** make it clear that the merchant (restaurant) is a different entity than the subsidizer (third party entity) that provides the price adjustment (discount). It is also now clear that *the qualifying action concerns a product of*

the subsidizer (or third party entity), or that the subsidy offer concerns a product of the subsidizer. In the context of the claims, and in view of the examples disclosed in the specification, Applicants respectfully submit that one skilled in the art would fully understand, not only that each third party entity (or subsidizer) is *different from* the restaurant (merchant) serving the entrees, but also that the qualifying action (or subsidy offer) *concerns a product of the subsidizer (or third party entity).*

Applicants note that claims **2, 3, 5-7, 10-12, 14, 26, 27, 35, 38, 65-68, 76-80 and 82-91** have been cancelled, and thus the indefiniteness rejection as to these claims is now moot.

In view of the above amendments and remarks, we respectfully submit that independent claims **1, 56, 60, 69, 71, 75, 81 and 92-95** are definite as one skilled in the art would easily be able to discern the scope of these claims. Accordingly, Applicants respectfully request withdrawal of the 35 U.S.C. § 112, second paragraph rejections of the pending claims.

D. Section 102(e) Rejections

Claims **1-18, 20-23, 27-71, 75 and 80-95** have been rejected as being anticipated by Chen. Consequently, independent claims **1, 56, 60, 69, 71, 75, 81 and 92-95** have been amended, and independent claims **65, 80 and 82** has been cancelled.

In particular, claims **1, 56, 60 and 92-95**, in addition to reciting that the plurality of products are associated with at least one merchant, and that the subsidy offer is associated with at least one subsidizer *different from* the at least one merchant, now also recite that the subsidy offer includes at least one qualifying action *that a customer must agree to perform to receive the price adjustment* and wherein the qualifying action *concerns a product of the subsidizer.* Similarly, independent claims **69, 71, 75 and 81** have been amended to make it clear that that the price adjustment is available upon completion of a qualifying action *that a customer must agree to perform to receive the price adjustment*, wherein the qualifying action *concerns a product of the third party entity.* Support for such changes can be found, for example, on page 19, line 27 to page 20, line 28; and on page 30, lines 19-21. No new matter has been added.

Pending claim **1** is illustrative of the present independent claims, and recites providing an indication of a plurality of products that each have an initial price and that are associated with at

least one merchant. The process includes providing an indication of an available price adjustment, and an indication of a subsidy offer being associated with at least one subsidizer different from the at least one merchant, wherein the subsidy offer includes a qualifying action *that a customer must agree to perform to receive the price adjustment*, and wherein the qualifying action concerns a product of the subsidizer. As discussed above, the present application contains numerous examples of qualifying actions of the third party (subsidizer) such as test driving a vehicle at an automobile dealership, shopping at a particular store, using a particular vending machine, using a specific credit card during a purchase, switching long distance telephone service providers, accepting a magazine subscription, and/or some combination of activities (See, for example, the application at page 18, lines 18-24). Such a process advantageously permits a merchant, such as a restaurant, to offer different prices to different customers for the same products (because a particular price for a product may depend on the subsidy and / or qualifying action), thereby allowing the customers to make purchasing decisions based on their own price sensitivity. Furthermore, the merchant may also receive a benefit from the completion of a qualifying action by a customer (see page 9, lines 17-26). The third party subsidizer benefits by gaining access to the merchant's customers for marketing opportunities (see page 10, lines 2-6), and the customers benefit because they get access to offers for products and / or items at reduced prices if they agree to complete or otherwise satisfy a qualifying action (see page 10, lines 7-14). Claim 1 has also been amended to recite *receiving an acceptance of the subsidy offer, and providing the price adjustment to the customer*.

In contrast, Chen is directed to methods and systems for reducing excess capacity of restaurants and other industries during off-peak hours. An auction system allows customers to bid for gift certificates that are redeemable at the businesses during the predetermined off-peak times (See Chen, Abstract; col. 1, lines 43-51; and col. 8, lines 19-31). In another aspect, Chen's system permits a user to enter an "incentive request" that may be processed by or for a restaurant to determine if a dining incentive should be issued to the customer. In another aspect, if an incentive is accepted, it may be issued to the customer without a paper certificate, for example, by storing the incentive information electronically with a payment processing system associated with the restaurant. In this case, a customer may provide payment information to receive the incentive, and when that payment information is input at the restaurant (i.e., a restaurant employee scans the customer's credit card to obtain payment for a meal that was served), then

the incentive can be retrieved and automatically deducted from the amount to be charged to that credit card number (Chen, col. 6, line 61, to col. 7, line 9). Each of these incentive schemes involves a discount provided by the restaurant and pertains only to the food dishes offered by the restaurant. Chen also discloses that item specific promotions could be offered that may be funded by the restaurant, or directly by a manufacturers or food and beverage suppliers. In his example, a customer who buys a bottle of red wine with a meal at the restaurant and pays with a credit card may be having his purchases tracked so that a manufacturer *could offer* that customer a 10% discount on another bottle of the *same* wine, or a competitor *could offer* a discount to the customer to try a similar red wine (Chen, col. 20, lines 3-13). But Chen does not teach or suggest offering a price adjustment for the plurality of products to a customer in exchange for that customer agreeing to perform a qualifying action that *concerns a product of the subsidizer*, and then *receiving an acceptance of the subsidy offer*, and *providing the price adjustment to the customer* (which pertains to the plurality of products, and not to the product of the subsidizer) as recited by pending claim 1.

Furthermore, independent claims **69 and 71** now recite *receiving a request from a customer utilizing a wireless device*, whereas independent claims **75 and 81** now recite *receiving a request from a customer utilizing a wireless device in a restaurant*. Support for such changes can be found, for example, on page 11, lines 20-26 of the specification. Thus, no new matter has been added. The applicants respectfully submit that Chen fails to teach or suggest such operation.

Accordingly, since Chen fails to teach or even suggest offering a price adjustment for one or more products (or items in a restaurant) to a customer in exchange for that customer agreeing to perform a qualifying action that *concerns a product of the subsidizer* (or *that concerns a product of a third party entity*) as generally recited by the independent claims **1, 56, 60, 69, 71, 81 and 92-95**, nor teach or suggest *receiving a request from a customer utilizing a wireless device* as generally recited by independent claims **69, 71, 75 and 81**, none of these independent claims are anticipated by Chen. Furthermore, since each of pending claims **4, 8, 9, 13, 15-25, 28-34, 36, 37, 39-55, 57-59, 61-64, 70, 72-75 and 96-106** depends upon either of claims **1, 56, 60, 69, 71, 81 or 92-95**, these claims are not anticipated for at least the same reasons.

In view of the above amendments and remarks, Applicants respectfully assert that claims **1, 4, 8, 9, 13, 15-25, 28-34, 36, 37, 39-64, 69-75, 81 and 92-106** are patentably distinct over Chen, and thus request withdrawal of all of the 35 U.S.C. §102(c) rejections.

E. Section 103(a) Rejection

Claims **19, 24, 25, 72-74 and 72-74** were rejected as being obvious in view of Chen.

Pending dependent claims **19, 24, 25 and 72-74** all concern verifying accuracy of a record, or receiving a verification request, or verifying the accuracy of a price associated with at least one item in a verification request. The Examiner admits that Chen does not teach verification (See paragraph 11 on page 3). However, as support for this rejection, the Final Action recites:

“Because verification is common sense (“measure twice, cut once”) and easy to achieve (Waiter, will I get the discount if I order this item?), it would have been obvious... to add price verification to the teachings of Chen et al.”. (Final Action, paragraph 11 on page 3).

Appellants respectfully assert that such an assertion, without more, does not constitute clear and particular findings supported by actual and substantial evidence of record that could support such an obviousness rejection. In addition, no evidence has been provided in support of any motivation to provide for any such features in Chen. Accordingly, no *prima facie* case of obviousness has been made for claims **19, 24, 25 and 72-74**, and request withdrawal of the Section 103 rejection.

Moreover, claims **19, 24, 25 and 72-74** directly or indirectly depend on at least one of independent claims **1 and 71**, which are patentably distinct from Chen for the reasons explained above. Consequently, claims **19, 24, 25 and 72-74** should be allowable for at least the same reasons.

In view of the above remarks, Applicants respectfully request withdrawal of the rejections based on 35 U.S.C. 103(a).

F. Conclusion

At least for the foregoing reasons, we respectfully submit that all of the claims are in condition for allowance, and the Examiner's early re-examination and reconsideration are respectfully requested.

If the Examiner has any questions regarding this Amendment or the present application, the Examiner is cordially requested to contact Stephan Filipek at telephone no. 203-461-7252 or via electronic mail at sfilipek@walkerdigital.com.

G. Peteion for Extension of Time to Respond and Fees and Other Payments

Applicants hereby petition for a two-month extension of time with which to respond to the Final Action. Please charge the fee for this petition to our Deposit Account No. 50-0271, along with the fees pursuant to 37 C.F.R. 1.17(e) for this request for continued examination, and to cover any fees that may be required to cover costs associated with filing additional claims in excess of those already paid for.

Applicants do not believe that any other fees are due. But if a fee should be necessary to continue prosecution of the present application, please charge any such required fee to our Deposit Account No. 50-0271, and credit any overpayment to Deposit Account No. 50-0271.

Respectfully submitted,

October 18, 2007
Date

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Electronic Patent Application Fee Transmittal

Application Number:	09850328			
Filing Date:	07-May-2001			
Title of Invention:	Method and apparatus for establishing prices for a plurality of products			
First Named Inventor/Applicant Name:	Jay S. Walker			
Filer:	Michael David Downs/Greg Venuto			
Attorney Docket Number:	00-101			
Filed as Large Entity				
Utility Filing Fees				
Description	Fee Code	Quantity	Amount	Sub-Total in USD(\$)
Basic Filing:				
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				
Post-Allowance-and-Post-Issuance:				
Extension-of-Time:				
Extension - 2 months with \$0 paid	1252	1	460	460

Description	Fee Code	Quantity	Amount	Sub-Total in USD(\$)
Miscellaneous:				
Request for continued examination	1801	1	810	810
Total in USD (\$)				1270

Electronic Acknowledgement Receipt

EFS ID:	2340665
Application Number:	09850328
International Application Number:	
Confirmation Number:	2523
Title of Invention:	Method and apparatus for establishing prices for a plurality of products
First Named Inventor/Applicant Name:	Jay S. Walker
Customer Number:	22927
Filer:	Michael David Downs/Greg Venuto
Filer Authorized By:	Michael David Downs
Attorney Docket Number:	00-101
Receipt Date:	18-OCT-2007
Filing Date:	07-MAY-2001
Time Stamp:	18:00:56
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	yes
Payment was successfully received in RAM	\$ 1270
RAM confirmation Number	4172
Deposit Account	500271
The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows: Charge any Additional Fees required under 37 C.F.R. Section 1.16 and 1.17	

File Listing:

Document Number	Document Description	File Name	File Size(Bytes) /Message Digest	Multi Part /.zip	Pages (if appl.)
1	NPL Documents	00-101_REF_10-18-07.pdf	1474494 0d760925d3567916d33966e921c5d06d3a86c2b06	no	23
Warnings:					
Information:					
2	Information Disclosure Statement Letter	00-101_IDS_10-18-07.pdf	95563 65efb3dfc2231a7e82a5a5cd7ae293b6f14a59f6cb	no	2
Warnings:					
Information:					
3	Request for Continued Examination (RCE)	00-101_RCE_TR_10-18-07.pdf	1069045 0482a6bfc3939dea5ca830ae6c43d6d9e877311276	no	1
Warnings:					
This is not a USPTO supplied RCE SB30 form.					
Information:					
4		00-101_RCE_05-18-07.pdf	197141 17d144c04445c05b51d479f8416da15c4a4a6d595	yes	24
	Multipart Description/PDF files in .zip description				
	Document Description		Start	End	
	Request for Continued Examination (RCE)		1	1	
	Claims		2	17	
	Applicant Arguments/Remarks Made in an Amendment		18	24	
Warnings:					
Information:					
5	Fee Worksheet (PTO-06)	fee-info.pdf	8330 36da3d9d1da772a5601f1a36e04c37b8f6721	no	2
Warnings:					
Information:					
Total Files Size (in bytes):			2844573		

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New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.